

REMARKS

Claims 1-70 are pending. Claims 1, 4-6, 9-10, 13, 15, 18-20, 23-24, 27, 29, 32-34, 37-38, 41, 57, 60-62, 65-66, and 69 are rejected under 35 U.S.C. § 102(e) as being anticipated by Greenstein et al. (U.S. Pat. No. 6,131,016). Claims 2-3, 8, 12, 16-17, 22, 26, 30-31, 36, 40, 58-59, 64, and 68 are rejected are rejected under 35 U.S.C. § 103(a) as being unpatentable over Greenstein et al. in view of Yang et al., "A Strength and SIR Combined Adaptive Power Control for CDMA Mobile Radio Channels." Claims 43, 46-48, 51-52, and 55 are rejected are rejected under 35 U.S.C. § 103(a) as being unpatentable over Greenstein et al. in view of Ulukus et al., "Handover Delay in Cellular Wireless System." Claims 44-45, 50, and 54 are rejected are rejected under 35 U.S.C. § 103(a) as being unpatentable over Greenstein et al. in view of Yang et al. and Ulukus et al. Claims 7, 11, 14, 21, 25, 28, 35, 39, 42, 49, 53, 56, 63, 67, and 70 are objected to as being dependent upon a rejected base claim. Claims 9, 23, 37, and 65 have been amended.

Claim 1 recites "A method of operating a communication circuit, comprising the steps of: receiving a plurality of signals from a plurality of remote transmitters; *determining which of the plurality of remote transmitters use transmit diversity*; calculating a signal strength of each respective signal of the plurality of signals; and *selecting one of the remote transmitters in response to the steps of determining and calculating*." (emphasis added). Examiner has selected transmitters 202 and 203 (Figure 2A) of Greenstein et al. as the plurality of remote transmitters of claim 1. Applicant assumes *arguendo* that 202 and 203 are a plurality of remote transmitters even though they are part of one base station 10 (Figure 1). In this case, neither transmitter 202 nor 203 uses transmit diversity, since each has only a single antenna 15 and 16, respectively. Thus, Greenstein et al. could not possibly disclose the step of "determining which of the plurality of remote transmitters use transmit diversity," since neither transmitter uses transmit diversity. Furthermore, Greenstein et al. fail to disclose the step of "selecting one of the remote transmitters in response to the steps of determining and calculating." Greenstein et al. fail to disclose the step of determining, so they necessarily fail to disclose the step of selecting in response to the step of determining. Thus, claim 1 and depending claims 4-6 are patentable under 35 U.S.C. § 102(e).

Alternatively base station 10 of Greenstein et al. is properly viewed as a single transmitter with transmit diversity as explained at col. 2, lines 53-59. Then Greenstein et al. also fail to disclose the step of "determining which of the plurality of remote transmitters use transmit diversity," since there is only a single transmitter. Furthermore, Greenstein et al. fail to disclose the step of determining, so they necessarily fail to disclose the step of selecting in response to the step of determining. Thus, claim 1 and depending claims 4-6 are patentable under 35 U.S.C. § 102(e).

With respect to the step of determining, Examiner states "the above-limitation is inherently taught by the reference since only those transmitters using transmit diversity send tone signals." (Paper No. 11, Page 4, lines 6-7). Applicant respectfully disagrees. Greenstein et al. state that these "tones constitute carrier tones for carrying communication information. That information can take the form of voice communication or data communication." (col. 2, lines 49-52). The tones disclosed by Greenstein et al., therefore, are common to all wireless communication. Alternatively, if Examiner's statement is limited to pilot tones as disclosed at col. 3, lines 4-5, it is inconsistent with the disclosure of Ling et al. (U.S. Pat. No. 5,737,327), previously cited by Examiner. Therein, Ling et al. disclose pilot symbols but are silent on diversity. (Abstract). Thus, the step of "determining," as recited in claim 1, is not inherent since all wireless transmitters send tone signals without regard to diversity.

Moreover, even if tone signals only originated from transmitters using transmit diversity, Greenstein et al. are still irrelevant. As previously discussed, if 202 and 203 are taken as a plurality of remote transmitters, neither employs transmit diversity. Alternatively, if 202 and 203 taken together produce transmit diversity, then Greenstein et al. fail to disclose a plurality of transmitters with transmit diversity. Thus, there is no disclosure of the steps of "determining which of the plurality of remote transmitters use transmit diversity," or "selecting one of the remote transmitters in response to the steps of determining and calculating." Thus, claims 1 and 4-6 are patentable under 35 U.S.C. § 102(e).

As in claim 1, claims 15-22, 29-36, and 57-64 recite "determining which of the plurality of remote transmitters use transmit diversity" and "selecting one of the remote transmitters in response to the steps of determining and calculating." For all the foregoing reasons, therefore, claims 15-22, 29-36, and 57-64 are also patentable under 35 U.S.C. § 102(e).

Claims 9-14 and 23-28 recite "transmitting a plurality of signals from a respective plurality of transmitters, *each transmitter of the respective plurality of transmitters having transmit diversity*; receiving an identity of a selected transmitter of the plurality of transmitters in response to transmit diversity and signal strength of each respective transmitter." Claims 37-42 recite "transmitting a plurality of signals from a respective plurality of transmitters, the plurality of signals having a common code and *each transmitter of the respective plurality of transmitters having transmit diversity*; receiving an identity of a selected transmitter of the plurality of transmitters in response to transmit diversity and signal strength of each respective transmitter." Claims 65-70 recite "transmitting a plurality of signals from a respective plurality of transmitters, the plurality of signals having common data and *each transmitter of the respective plurality of transmitters having transmit diversity*; receiving an identity of a selected transmitter of the plurality of transmitters in response to transmit diversity and signal strength of each respective transmitter." (emphasis added).

Claims 9-14, 23-28, 37-42, and 65-70 have been amended to specifically recite each transmitter having transmit diversity. As previously discussed, Greenstein et al. fail to disclose that each transmitter of the plurality of transmitters has transmit diversity. Thus, claims 9-14, 23-28, 37-42, and 65-70 are patentable under 35 U.S.C. § 102(e).

Claims 43, 46-48, 51-52, and 55 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Greenstein et al. in view of Ulukus et al. Applicant notes that Examiner offers to follow steps (e)-(h) but only describes steps (a)-(d) in the present Office Action. (Paper No. 11, Page 8, Para. 8). Applicant requests clarification if Examiner maintains the present rejection in view of the following.

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Examiner concedes that Greenstein et al. are silent on receiving a plurality of signals from a plurality of base stations. Examiner further states that Ulukus teaches receiving a plurality of signals from a plurality of base stations. Applicant agrees on both points. Claims 43-50, however, also recite "determining which of the plurality of remote base stations use transmit diversity" and "selecting one of the remote base stations in response to the steps of determining and calculating." Ulukus et al. are silent on diversity. Examiner admits that Greenstein et al. do not disclose a plurality of base stations and, therefore, could not teach or suggest determining which of a plurality of remote base stations use transmit diversity. A combination of Greenstein et al. with Ulukus et al. fails to disclose all the limitations of claims 43 and 46-48. Thus, claims 43 and 46-48 are patentable under 35 U.S.C. § 103(a).

Claims 51-56 recite "receiving an identity of a selected base station of the plurality of base stations in response to transmit diversity and signal strength of each respective base station." A combination of Greenstein et al. with Ulukus et al. fails to disclose receiving anything from a plurality of base stations, each having transmit diversity. Thus, claims 51-52 and 55 are patentable under 35 U.S.C. § 103(a).

Applicant acknowledges the rejection of dependent claims 2-3, 8, 12, 16-17, 22, 26, 30-31, 36, 40, 44-45, 50, 54, 58-59, 64, and 68 under 35 U.S.C. § 103(a) but believes it is moot in view of the foregoing discussion.

In view of the foregoing, applicant respectfully requests reconsideration and allowance of claims 1-70. If the Examiner finds any issue that is unresolved, please call applicant's attorney by dialing the telephone number printed below.

Respectfully submitted,



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